IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 1579 of 2005
Date of Decision: 12.2.2007

M/s Enn Ess Electronic Jalandhar and others ...Petitioners

Versus

Smt. Harbans Kaur and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Salil Sagar, Advocate, for the petitioners.

Shri V.G. Dogra, Advocate, for respondent Nos. 1 to 3.

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned Rent Controller on 17.2.2005, whereby the learned Rent Controller assessed provisional arrears of rent and costs.

The respondent-landlords filed the ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as `the Act') for ejectment of respondent No. 1 i.e. the present petitioner No. 1 and respondent Nos. 2 to 4 i.e. present petitioner Nos. 2 to 4 (hereinafter collectively referred to as `the tenants'), as its partners, on the ground that the tenants have taken on rent the demised premises with effect from 1.6.1991 at a monthly rent of Rs.5500/- which is now Rs.8030/- p.m. with effect from 1.6.2001. It was alleged that the tenants i.e. the partners of the firm have sub let the part of the premises to respondent Nos. 5 and 6 in the original petition.

In the written statement, the stand of the tenants

was that though initially the premises were taken on rent but now the tenancy stands extinguished vide a compromise-cum-agreement dated 29.8.2001, wherein petitioner No. 2 was inducted as a tenant in part of the demised premises at a monthly rent of Rs.4200/-, petitioner No.3 as a tenant in another shop at a monthly rent of Rs.2100/- whereas petitioner No. 4 is also a tenant in another shop at a monthly rent of Rs.2100/- and therefore, the eviction sought on the basis of previous rent agreement dated 18.7.1991 is not maintainable.

The learned rent Controller directed the tenants to make the payment of arrears of rent in terms of the plea raised in the written statement as the provisionally assessed rent.

Learned counsel for the petitioners has vehemently argued that the integrity of the tenancy established in favour of petitioner No.1 has since been terminated by execution of a compromise-cum-agreement dated 29.8.2001, therefore, there could not be any direction to pay arrears of rent in terms of the independent tenancy, which is not subject matter of eviction petition.

However, I do not find any ground to interfere in the present revision petition at this stage of the proceedings. The question whether the petitioners are independent tenants by virtue of subsequent agreement dated 29.8.2001 or the possession of the petitioners is that of joint tenants, is the question which is required to be decided on the basis of evidence which may be led by the parties. The payment of arrears of rent after provisional assessment of rent is a concession given to the tenant to avoid eviction on the basis of rent found due after the final determination of lis. It is open to the petitioners not to tender arrears of rent but it shall not

be open to the petitioners to seek any other opportunity to tender the said arrears of rent if ultimately the petitioners fail to establish that their possession is by virtue of independent tenancy in terms of the compromise-cum-agreement dated 29.8.2001. Such is the view taken by me in **Rajinder Lal v. Gopal Krishan 2006(2) PLR 124.**

In view of the above, I do not find any patent illegality or irregularity in the impugned order passed by the learned Rent Controller, so as to warrant interference by this Court in exercise of its revisional jurisdiction.

Hence, the present petition is dismissed.

12-02-2007 (HEMANT GUPTA)
ds JUDGE